United Nations

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 971

Case No 828: STEPANENKO

Against: The Secretary-General of the International Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of: Mr. Mayer Gabay, Vice-President, presiding; Mr. Victor Yenyi Olungu; Mr. Kevin Haugh;

Whereas, on 10 August 1999, Vladimir Alekseevich Stepanenko, a former staff member of the International Maritime Organization (hereinafter referred to as IMO), filed an application in which he requested, in accordance with article 11 of the Statute of the Tribunal, the revision of Judgement No. 763 rendered by the Tribunal on 26 July 1996;

Whereas the Applicant's pleas read, in part, as follows:

"1. I seek to be reappointed as Head, Russian Translation Section, Conference Division, International Maritime (IMO). I respectfully request the Tribunal to revoke the decision of the IMO Secretary-General, regarding the post for which I applied, of which I was notified by the letter dated 3 August 1999 (...).

2. I respectfully request the Tribunal to recognize the the IMO Secretary-General, in contradiction to the Judgement No. 763 of the United Nations Administrative Tribunal (UNAT), did not consider fully and reasonably, on a priority basis, my application dated 21 November 1998 (...).

3. I respectfully request the Tribunal to recognize that the IMO Secretary-General did not give reasonable explanation and grounds for the denial to appoint myself for the post of Head, Russian Translation Section, in his reply dated 3 August 1999 (...), communicated to me, by the Director, Administrative Division.

4. I respectfully request the Tribunal to recognize that the IMO Secretary-General should have appointed me to the post of Head, Russian Translation Section, in case my application to the post dated 21 November 1998 (...), had been given appropriate, fair and priority consideration under UNAT Judgement No. 763.

5. In the event of compensation being paid in lieu of reappointment, I respectfully request the granting of award in the amount of three years net base salary, bearing in mind especially great moral injury sustained by myself""

Whereas the Respondent filed his answer on 5 May 2000;

Whereas the facts in the case were set out in Judgement No. 763.

Whereas the Applicant's principal contentions are:

1. The Respondent failed to give the Applicant full and fair priority consideration as required pursuant to Judgement No. 763.

2. The Applicant suffered substantial moral injury as a result of the Respondent`s actions.

Whereas the Respondent's principal contentions are:

1. The application is procedurally and substantively insufficient as a result of the Applicant's failure to submit the claim to an internal appeals body in compliance with article 7 of the Tribunal's Statute.

2. The Applicant failed to comply with the requirements of the Tribunal Statute article 11 for revision of judgements.

3. The Respondent acted lawfully and with reasonable justification with respect to priority consideration, secondment and internal promotion.

4. The Applicant is not entitled automatically to be given precedence over another candidate applying for the post.

5. The Applicant failed to prove injury or damages and is entitled to no compensation.

The Tribunal, having deliberated from 26 October to 17 November 2000, now ponounces the following judgement:

I. The Applicant requests the Tribunal to interpret the operative part of Judgement No. 763 of 26 July 1996, which ordered the Respondent to give the Applicant priority consideration for any post for which he fulfils the conditions and is found to be qualified.

The Applicant states that the post of Head of the IMO Russian Translation Service became vacant and that by his letter of 21 November 1998 he requested that he be appointed in that post. He further states that the Respondent, by a letter dated 3 August 1999, informed him of the decision to promote another internal candidate on the basis of the latter's seniority and qualifications. Considering that the appointment of this candidate would be contrary to the operative part of the aforementioned judgement, the Applicant has requested the interpretation and rescission of the Respondent's decision or compensation for moral injury.

II. The Respondent contends that the application is irreceivable because the requirements for an application for revision of judgement have not been fulfilled, in particular because there has been no discovery of some fact unknown at the time the judgement was given. He further maintains that the Tribunal did not order him to reinstate and promote the Applicant automatically but to consider his candidacy for the post, which was done.

III. The Tribunal considers that the application concerns the interpretation and not the revision of the judgement. The Applicant did not know how to state his claims clearly.

The request for interpretation concerns the phrase which appears in the operative part of the judgement, namely "be given priority consideration".

IV. As it has stated in its Judgements No. 61, *Crawford* (1955) and No. 366, *Sabatier* (1986), the Tribunal considers that in accordance with the general principles of law, it is competent to interpret its own judgements: such competence is inherent in the judicial function of a tribunal. It has decided not to receive a new application and to insist that the Applicant demonstrate a legitimate interest. In this case, the Applicant who, rightly or wrongly, believes that he has been treated unfairly has an interest in seeing the operative part of the judgement clarified.

V. With regard to the meaning to be attributed to the phrase "be given priority consideration", the Tribunal emphasizes that its decision cannot be interpreted as running counter to the principle that staff members in the same situation must be treated equally, a principle which governs the management of the international civil service. It follows that in using that phrase, the Tribunal did not intend to order the automatic reinstatement and promotion of the Applicant in whose favour the judgement was rendered. According to the Applicant's line of reasoning, the Tribunal would substitute its judgement for that of the Administration in matters of promotion and appointment, fields in which the Respondent possesses wide discretion. Furthermore, the concern to provide the Organization with staff meeting the highest standards of efficiency, competency and integrity in accordance with Article 101 of the Charter, which has often been reflected in the decisions of the Tribunal (Judgement No. 385, *Sobel* (1987)), prevents this phrase from being interpreted too restrictively.

Consequently, the Tribunal interprets the phrase "be given priority consideration" as follows: When considering candidacies for the vacant post for which the Applicant is qualified, the Administration must give priority consideration to the candidacy of the Applicant, but that does not preclude consideration of other candidates for the same post.

However, if the Applicant has the same qualifications as another candidate, preference shall be given to the Applicant". This interpretation is compatible with prior decisions.

VI. With regard to the rescission of the decision and the compensation requested, the Applicant has not proved, as he is required to do, that his qualifications for the post are equal or superior to those of the staff member actually promoted; consequently, the Tribunal cannot find that there was any abuse of power in the exercise of discretion.

VII. For these reasons, the Tribunal rejects the application.

(Signatures)

Mayer GABAY
Vice-President, presiding

Victor YENYI OLUNGU
Member

Kevin HAUGH
Member

New York, 17 November 2000

Maritza STRUYVENBERG
Executive Secretary